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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 IN RE: SECTION 16(B) LITIGATION

MASTER CASE NO. C07-  
1549JLR

ORDER

14 This consolidated case involves 54 derivative shareholder actions brought by one  
15 shareholder, Plaintiff Vanessa Simmonds. The cases are based on the theory that  
16 Defendants engaged in insider trading during the late 1990s and early 2000 during which  
17 there was an increase in private companies going public. Ms. Simmonds sued the  
18 underwriters that were responsible for underwriting the initial public offerings (“IPOs”)  
19 for many of these companies (hereinafter the “Underwriter Defendants”), whose duties  
20 included setting an IPO price for the shares. Ms. Simmonds also named, as nominal  
21 defendants, the companies themselves (hereinafter the “Issuer Defendants”).  
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1 On March 12, 2009, the court granted the Issuer Defendants' motion to dismiss  
2 without prejudice, and granted the Underwriter Defendants' omnibus motion to dismiss  
3 with prejudice (Dkt. # 78). Ms. Simmonds appealed, and the Court of Appeals for the  
4 Ninth Circuit affirmed in part, vacated in part, and remanded. *Simmonds v. Credit Suisse*  
5 *Secs. (USA) LLC*, 638 F.3d 1072 (9th Cir. 2011). Defendants appealed to the United  
6 States Supreme Court, which granted certiorari. *Credit Suisse Secs. (USA) LLC v.*  
7 *Simmonds*, 131 S. Ct. 3064 (2011). On March 26, 2012, the Supreme Court vacated the  
8 Ninth Circuit's opinion and remanded. *Credit Suisse Secs. (USA) LLC v. Simmonds*  
9 (*"Credit Suisse"*), 132 S. Ct. 1414 (2012).

10 On May 16, 2012, the Ninth Circuit entered an order directing this court to dismiss  
11 with prejudice the following cases involving the Issuer Defendants: C07-1549; C07-  
12 1567, C07-1570, C07-1571, C07-1572, C07-1573, C07-1576, C07-1584, C07-1587, C07-  
13 1588, C07-1589, C07-1590, C07-1594, C07-1595, C07-1597, C07-1598, C07-1605, C07-  
14 1623, C07-1624, C07-1629, C07-1631, C07-1633, C07-1637, C07-1652, C07-1653, C07-  
15 1654, C07-1655, C07-1666, C07-1667, and C07-1669. (USCA Order (Dkt. # 101) at 36.)  
16 The Ninth Circuit also remanded the following cases involving the Underwriter  
17 Defendants for proceedings consistent with the Supreme Court's opinion in *Credit*  
18 *Suisse*: C07-1566, C07-1568, C07-1569, C07-1575, C07-1577, C07-1578, C07-  
19 1579, C07-1580, C07-1581, C07-1582, C07-1583, C07-1585, C07-1593, C07-1626, C07-  
20 1627, C07-1628, C07-1630, C07-1632, C07-1634, C07-1635, C07-1636, C07-1638, C07-  
21 1668, C07-1670. (USCA Order at 35-36.) On June 7, 2012, the Ninth Circuit issued its  
22 mandate (Dkt. ## 102, 103).

1 On June 11, 2012, prior to this court entering any order consistent with the Ninth  
2 Circuit's mandate, Ms. Simmonds filed identical notices of voluntary dismissal in all 54  
3 of her cases. The notices of dismissal state in full:

4 Pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiff hereby dismisses this  
5 action with prejudice as to the adequacy-of-the-pre-suit-demand issue under  
6 the standard articulated by the Ninth Circuit (*see Simmonds v. Credit Suisse*  
*Sec. (USA) LLC*, 638 F.3d 1072, 1097 (9th Cir. 2011) (citing *In re*  
*Kauffman Mut. Fund Actions*, 479 F.2d 257, 267 (1st Cir. 1973)), and  
7 without prejudice as to all other issues.

8 (*See, e.g.,* Not. of Dismissal (Dkt. # 104) at 2.) Rule 41(a)(1)(A)(i) states that a plaintiff  
9 may dismiss an action without a court order by filing "a notice of dismissal before the  
10 opposing party serves either an answer or a motion for summary judgment . . . ." Fed. R.  
11 Civ. P. 41(a)(1)(A)(i). Here, it is undisputed that no defendant has filed an answer or  
12 motion for summary judgment.

13 Nevertheless, on June 20, 2012, the Underwriter Defendants filed a response to  
14 Ms. Simmonds's notices of dismissal. (Resp. (Dkt. # 105).) First, the Underwriter  
15 Defendants contend that Ms. Simmonds's notices of voluntary dismissal operate to  
16 dismiss the entire action with prejudice, arguing that her attempt to parse the dismissal on  
17 an issue-by-issue basis is legally inoperative. (*Id.* at 2.) Second, the Underwriter  
18 Defendants assert that Ms. Simmonds is not entitled to voluntarily dismiss the cases that  
19 the Ninth Circuit ordered this court to dismiss with prejudice. (*Id.* at 2-3.) Finally, the  
20 Underwriter Defendants maintain that dismissal with prejudice of all of Ms. Simmonds's  
21 cases is appropriate because her claims are time-barred under the Supreme Court's  
22 opinion in this matter. (*Id.* at 3-4.)

1 “It is well-settled that under Rule 41(a)(1)(i), ‘a plaintiff has an absolute right to  
2 voluntarily dismiss his action prior to service by the defendant of an answer or a motion  
3 for summary judgment.’” *Commercial Space Mgmt. Co. v. The Boeing Co.*, 193 F.3d  
4 1074, 1077 (9th Cir. 1999) (quoting *Wilson v. City of San Jose*, 111 F.3d 688, 692 (9th  
5 Cir. 1997)); *see also United States v. Real Prop. Located at 475 Martin Lane, Beverly*  
6 *Hills, CA*, 545 F.3d 1134, 1145 (9th Cir. 2008). As the Ninth Circuit explained in  
7 *Pedrina v. Chun*, 987 F.2d 608 (9th Cir. 1993):

8 Th[e] [filing of notice] itself closes the file. There is nothing the defendant  
9 can do to fan the ashes of that action into life and the court has no role to  
10 play. This is a matter of right running to the plaintiff and may not be  
11 extinguished or circumscribed by adversary or court. There is not even a  
perfunctory order of court closing the file. Its alpha and omega was the  
doing of the plaintiff alone. He suffers no impairment beyond his fee for  
filing.

12 *Id.* at 610 (internal citation omitted). “Because the dismissal is effective on filing and no  
13 court order is required, ‘[t]he filing of a notice of voluntary dismissal with the court  
14 automatically terminates the action as to the defendants who are the subjects of the  
15 notice.’” *Commercial Space*, 193 F.3d at 1077 (quoting *Wilson*, 111 F.3d at 692). The  
16 effect is to “leave[ ] the parties as though no action had been brought.” *Id.* (quoting  
17 *Wilson*, 111 F.3d at 692) (alternation in *Commercial Space*). In sum, “it is beyond debate  
18 that a dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the  
19 parties are left as though no action had been brought, the defendant can’t complain, and  
20 the district court lacks jurisdiction to do anything about it.” *Id.* at 1078.

21 In light of these principles, the court is not persuaded by the Underwriter  
22 Defendants’ arguments articulated above. With respect to their first argument that the

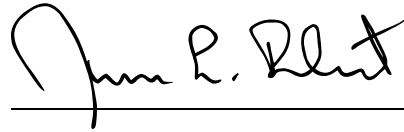
1 court should deem Ms. Simmonds's dismissals to be with prejudice, a determination of  
2 the effect of Ms. Simmonds's notices of dismissal (i.e. whether they are with or without  
3 prejudice) should be made if and when she initiates a second action that includes the  
4 same claim. *See id.* at 1080 ("Like determinations of res judicata, which routinely occur  
5 in the context of a different action, and usually in a different forum, we see no reason  
6 why the interests of judicial economy are not well served by deferring resolution of the  
7 effect of prior dismissals under the two dismissal rule to the third action, if and when one  
8 is filed that is based on or includes the same claim."). Regarding their second argument  
9 that Ms. Simmonds cannot voluntarily dismiss because of the Ninth Circuit's May 16,  
10 2012 order, the court has found no binding authority providing an exception to the  
11 "absolute right" to voluntarily dismiss prior to service of an answer or a motion for  
12 summary judgment. The effect of the Ninth Circuit's May 16, 2012 order can be  
13 assessed if Ms. Simmonds files another similar action against any of the Underwriter  
14 Defendants or Issuer Defendants. Finally, with respect to the Underwriter Defendants'  
15 third argument that the merits of the case require dismissal with prejudice, it is improper  
16 for the court to address the merits of the case after Ms. Simmonds filed her notices of  
17 dismissal. *See id.* at 1078.

18       Based on the foregoing, the court DENIES the Underwriter Defendants'  
19 objections to Ms. Simmonds' notice of voluntary dismissal and DIRECTS the clerk to

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1 terminate all of Ms. Simmonds' 54 cases that have been consolidated under Master Case  
2 No. C07-1549JLR pursuant to her notices of voluntary dismissal.

3 Dated this 8th day of July, 2012.

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6 JAMES L. ROBART  
7 United States District Judge  
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